1949.

Examined

File No. S. Bel. 1/49

Legal DEPARTMENT

A BRANCH

Subject:— Civil Suit No. 33 of 1948.

1) R. A. Sirur and Son - - - -
firm represented by its partner - ? - P 68.
R. A. Sirur - - J

Versus

1) The Province of Bombay - - - Defts.

- for a recovery of Rs. 500/- paid by plaintiff for taking a 'D' class dealer's licence under the Bombay Cotton Cloth Trade Regulation Order of 1945 -

---

P-14=E

S. Bel. 1/49

File No.

CONTENTS.

Legal Department File No. S. Bel. 1/49.

Sr. No.	Compilation No.	Subject	Pages.
		Suits Belgaum.	
		C. S. No. 33 of 1948	
		R. A. Sirur and son	
		Vs.	
		Province of B'bay.	
		For recovery of Rs 500/- paid by plff. for taking a 'D' class dealer's licence under the Bombay Cotton cloth Trade Regulation Order of 1945.	
1)	Printed L. D. G.R No. 10469 8-11-48	Sanctioning the defence of the suit.	7.
2)	L. D. G. R. No. 15148 27-12-49.	Sanctioning the institution of an appeal.	19.
3)	L. D. G R. No. 8019 13-5-52.	Recording the result of the suit.	27

Regular Civil Suit No. 33 of 1948.

In the Court of the Civil Judge, Senior Division,

Belgaum.

1. R.A.Sirur and Son, Firm represented by its partner Ramkrishna Anandrao Sirur, age 63, caste Brahmin, occupation representative canvasser, residing at 115, Magazine Road, Camp, Belgaum..... Plaintiff.

Against.

1. The Province of Bombay..... Defendant.

Claim Rs. 500/- for both court Fee and jurisdiction.

The Plff above named begs to state :-

1. Plff is a Firm, at Belgaum, doing business of -- representative canvasser for cloth produced by the Mysore, Minerva Mills, Bangalore, and Modern Mills, Bombay. The plff being a mere sales representative of the Mills, has no authority to conclude any transactions with the cloth dealers nor is he authorised to settle agreements or contracts with the dealers on behalf of the Mills. The work of the Firm consists in showing the samples of cloth manufactured by the Mills to the local cloth dealers from whom offers are received which are forwarded to the Mills, who accept or reject the same. If the offers are accpted, the Mills make direct contracts with the dealers, supply them goods direct and collect the value direct on the Railway receipts to the local Banks. for this work the plff receives instead of pay from the said Mills a commission of 1¼ p.c. on the value of goods supplied to the dealers by the Mills.

2. The Plff has been doing this business since the year 1942. The plff was called upon by the District Magistrate, Belgaum, pursuant to the order entitled "The Bombay Cotton Cloth Trade Regulation Order 1945, " to take out a "L, class dealer" licence on the ground that the P was carrying on business in cloth as an agent. He therefore called upon to pay Rs. 500/- which is

-fee prescribed for 'D' Class licence under the said Trade Regulation Order, 1945. Plff carried on correspondence with the District Magistrate, Belgaum, and the Government of Bombay protesting that he was not a "dealer" within the meaning of the Order of 1945 and that he was not therefore required to take out a licence as a 'D' or any Class dealer. The Plff's contention not having been acceded to, the Plff had to make the payment of Rs. 500/- and to take out a 'D' Class dealer's licence which he did under protest on 12-12-1946; Plff has deposited Rs. 50/- on 28-3-1945 for 'F' Class licence in the first instance and paid the balance of Rs.450/ on 13-12-1946. A licence was accordingly granted to him.

3. The plff submits that he is not a 'dealer' within the meaning of the definition of that term as given in the Bombay Cotton Cloth Trade Regulation Order 1945. The Plff does not carry on business in cloth as an agent. The plff is merely a representative convasser having no authority to conclude any contracts with the dealers on his own responsibility. The plff, therefore, says that he is not liable to take out a licence of any of the six classes of dealers given in the said Regulation order. The plff, therefore, applied to the authorities concerned for the refund of this amount credited under protest and as the same was refused, Plff was constrained to give legal notice of the suit on 27-6-1947. As the said request was not complied with, plff files this suit for the recovery of the same.

4. The cause of action accrued to Plff on 13-12-1946, when the amount was paid under protest.

5. Due notice of the suit has been given to the Collector of Belgaum, on 27-6-1947 and the same has been served on him on 28-6-1947.

6. The Plff claims Rs. 500/- being the amount paid by him under protest and future interest on the same by way of damages.

7. The claim in suit is valued at Rs.500/- for purposes of Court fees and jurisdiction and the Court fees on the said amount have been paid.

8. As the amount of Rs.500/- was paid at Belgaum, this suit is filed against Government here and this Court has jurisdiction to try and hear this suit.

9. Plff is a Firm and the suit has been filed on behalf of the Firm by its partner.

10. Plff. prays :-

(A) That he be awarded Rs. 500/- with interest from date of suit by way of damages and costs of the suit.

(b) That he be awarded such other relief or reliefs as he may be found entitled to.

(c) A decree may kindly be granted in these terms.

==========

Documents as per list accompany.

Dated.:- 11th February 1948. Sd/. K.A.Sirur
Sd/. for K.A.Sirur & son.

I, Kashrishna Anandrao Sirur, partner of the firm "K.A.Sirur and Son" do hereby solemnly affirm that the contents in the above plaint in paras 1 to 10 are all true accordingk to my personal knowledge, information and belief.

Signed at Belgaum, this 11th day of February, 1948.

Sd/- K.A.Sirur.
for K.A.Sirur & son

Drafted and presented by.

Sd/. J.V.Adyanagi.
PLEADER.

S-494

In the Court of the Civil Judge, Senior Division,
Belgaum.

Civil Suit No. 33 of 1948.

R.A.Sirur and Son. ... ... Plaintiffs.

versus

The Province of Bombay. ... Defendant.

The following is a written statement on behalf of the Province of Bombay in this case :-

1. The plaintiffs' claim for refund of Rs.500/- paid by them as licence fee is denied. This defendant submits that the plaintiffs being the selling agents of the three Textile Mills mentioned in paragraph 1 of the plaint are 'D' class dealers within the meaning of section 4(a)(iv) read with section 2(b) of the Bombay Cotton Cloth Trade Regulation Order of 1945. They were therefore rightly called upon by the District Magistrate to take a 'D' class licence in Form V of the Bombay Cotton Cloth Trade Regulation Order. The plaintiffs' averments that they were not required to take out a 'D' class licence is incorrect and not admitted.

2. Without prejudice to the above contentions the defendant submits that in any event the plaintiffs are not entitled to the refund of the licence fee once paid. If the plaintiffs thought that they were not liable to obtain a 'D' class dealer's licence, they could have refused to obey the directions in that behalf and faced the legal consequences. The licence fee is recovered for the cost of issuing licence and is not refundable once it is paid and the licence issued to the licensee.

3. The defendant therefore submits that the plaintiffs are not entitled to the refund claimed

or to any other relief and that therefore the suit may be dismissed with costs.

Dated .....

District Government Pleader,
Belgaum.

I, , District Government Pleader, Belgaum, do hereby declare that what is stated in paragraphs 1 to 3 above is true according to the information received and believed to be true. This verification is made at on the day of 1948.

District Government Pleader,
Belgaum.

Suits :

Belgaum.

For recovery of Rs. 500 paid by plaintiff for taking a 'D' class dealer's licence under the Bombay Cotton Cloth Trade Regulation Order of 1945.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 10469.

Bombay Castle, 8th November 1948.

Letter from the Collector of Belgaum, No. L.A.W., dated the 21st July 1948—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 83 of 1948.

R. A. Sirur & Son, Firm represented by its partner R. A. Sirur. } Plaintiffs;

versus

The Province of Bombay ... ... Defendant.

Endorsement by the Commissioner, Southern Division, No. LST. 400, dated the 4th August 1948—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, No. 10182, dated the 29th October 1948—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

Original

[P.T.O.

To

*The Civil Supplies Department,
*The Commissioner, Southern Division,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1948.

Copy forwarded for information and guidance to

Issued
asp
1/2/49

Submitted after issue
File in S. Belgaum/49 (new)
2-2
AS. Pl. 12

9 6466

BELGAUM CIVIL SUIT NO. 33 OF 1948.

Chronological Statement of Facts.

The suit is filed by Messrs. R. A. Sirur & Son for recovery of Rs. 500 paid by them for taking a 'D' class dealer licence under the Bombay Cotton Cloth Trade Regulation Order of 1945.

2. On 6th September 1945 the plaintiffs applied to the District Magistrate, Belgaum, for a 'F' Class dealer's licence stating that they were the sales representatives of three Textile Mills in piece goods only and that they did not deal in cloth on their own account or as agents. After referring the matter to the Provincial Textile Controller, the District Magistrate informed the plaintiffs that they were the mill-brokers and as such they were required to take a 'D' class dealer's licence in form V and they were called upon to credit Rs. 450 as licence fee in addition to Rs. 50 already credited by them for the 'F' class licence fee.

3. The plaintiffs objected to being classed as brokers and agents and contended that they did not come within the definition of the 'D' class dealer under the Bombay Cotton Cloth Trade Regulation Order. But the plaintiffs' contention was rejected and they were finally informed that as selling agents of Mills they will have to take out 'D' class licence. The plaintiffs then paid Rs. 450 as balance of licence fee for the 'D' class licence and gave of notice of suit on 27th June 1947. On 11th February 1948 the suit was filed in the Court of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

The plaintiffs contend that they are mere sales representatives of the Textile Mills having no authority to conclude any transactions with the cloth dealers nor are they authorised to settle agreements with the dealers on behalf of the Mills, that their business consists in showing samples of cloth manufactured by the Mills to the local cloth dealers from whom they receive offers which they forward to the Mills, who either accept or reject the same, that if the offers are accepted the mills make a direct contract with the dealers and supply the goods direct and that the plaintiffs receive from the said Mills a commission on the value of the goods supplied to the dealers by the Mills. The plaintiffs therefore contend that they are not 'D' class dealers within the meaning of section 4(*a*) (*iv*) read with section 2(*b*) of the Bombay Cotton Cloth Trade Regulation Order of 1945. The plaintiffs' contention should not be admitted. It seems clear that the plaintiffs are dealers within the definition given in section 2(*b*) under which a dealer is a person carrying on the business whether as principal or agent of buying or selling, whether whalesale or retail, etc. The plaintiffs no doubt do not store cloth for sale. Nevertheless on their own admission they sell the cloth as agents for the Textile Mills for which they get their commission from the said Mills. They do not merely bring two contracting parties together but they work for one party by canvassing orders for the said party and for that work they obtain commission from their principals. Clearly they are the agents of the Textile Mills concerned and as such 'D' class dealers who are required to take a licence in Form V of the Bombay Cotton Cloth Trade Regulation Order.

2. Even assuming that the plaintiffs are not 'D' class dealers, it should be contended that a licence fee once paid cannot be refunded. The licence fee is payable for the costs of issuing the licence. If the plaintiffs were convinced that they were not legally bound to take out a 'D' class licence, it was open to them to refuse to obey the directions of the licensing authority and face the legal consequences of such refusal. They were not bound to obey those directions. Having paid the licence fee and having taken out a 'D' class licence, they are not now entitled to claim a refund of the same.

3. It should therefore be contended that the suit fails and must be dismissed with costs.

S Bel 145 (new)

3-2-45

JUDGEMENT.

Received on:- 11-2-1948. Decided on:- 29-11-1949.

Registered on:-11-2-1948. Duration. 1- 9-1949.

IN THE COURT OF THE CIVIL JUDGE, S.DN,BELGAUM.

Civil Suit No. 33 of 1948.

Ex. 47.

Mr.S.V.Addanagi. Pleader.

1. R.A.Sirur, and sons, Firm represented by its partner Ramkrishna Anadrao Sirur, age 63; caste Brahmin, occ. representative canvasser residing at 115,camp,Belgaum. ... PLFF.

against.

Mr. B.V.Jahati. Pleader.

1. The Province of Bombay. ... .. Deft.

Claim Rs;- 500/- for Court fees and Jurisdiction.

The plff suesto recover Rs. 500/- with interest by way of damages and costs from deft alleging that plffis the firm at Belgaum doing business of a representative canvosser for cloth produced by the Mysore, Minarva Mills, Banglore an Modern Mills, Bombay that a plff being a mere sales represen ative of the mills, have no authority to conclude any trans--actions with the cloth dealers nor is he authorised to sett agteements or contracts with the dealars on behalf of Mills, that the work of the plff consists in showing the samples of the cloth manufactured by the mills to the local cloth dealers from whom offers are received which are forwarded to the mills, who accept ot reject the same, that if offers ar accepted, themills may dorect contract with the dealers supplu them goods direct by issuing raliway receipts to loca Banks, that for this work, theplff receives 1¼ P.C. as - comnision from said mills, on thevalue of the goods supplied to the dealers by the mills, that theplff was doing such of bussiness since 1942, that plff first issued "F" lic on 28-9-1945 on payment of Rs. 50/- that this "F" li not also required by plff, that later on theDistrict

District Magistrate, Belgaum peruant of the order called " The Bombay Cotton Cloth Trade Regulation orfer 1945" insisted upon plff to issue a "D" class license on the ground that the plff was ~~xxxxxxxxx~~ carrying on business in cloth as an agent, that the plff was not required to issue the "D" class licence under the said regulation as he was not a dealer within the meaning of theorder, that plff, however paid, Rs. 450/- on 13-12-1943 under protest and issued the "D" license, that he is merely a representative canvasser and not a dealer, that the Govt, illegally reocer ed Rs. 500/- from him, that he is entitledto refund the amount, that he served a legal notice on Govt. on 27-6-1947, that the cause of action arose on 13-12-1947.

The deft contends by ex.11. that plff was a selling agent of the three Textile Mills and was therefore obliged to issue a "D" class license under the said regulation order, that the license issued to the plff was quite legal and proper, that the license fee, if recovered for thecosts of issuing license is not refundable once it is paid and the license is issued to the licensee, that plff is not entitled to the refund of the amount.

The issues for trail as per ex.14 are as below:-

1. Is the suit by the plff Firm through the alleged one partner alone proper and competent?
2. Does the plff firm prove that it is only a representative canvassers i.e. doing business of a representative canvasser only and that it is not such a dealer as to be a "D" class dealer in law under the alleged Trade Regulation of 194
3. If so, does theplff Firm prove that it was force to have the alleged ~~Trade Regulation of 1945~~ license in such facts as to entitle him in law to claim the refund of the licence fees?

dated 12-12-1946 on payment of Rs. 450/-, plff firm got the "D2 license vide Ex.30 dated 1-1-1947. Plff's case is that he does not fall under the head" dealer" as defined in the notification and that the amount of Rs. 500/- was illegally exacted by the Collector for the unwanted license of any class. He, therefore, seeks the refund of Rs. 500/-At the trail, plff leaves his claim in respect of Rs. 50/- paid for license vide ex.34.

2. The defence of the Governemnet is that plff rm was dealing cloth business as the agent of the mills l the license "D" issued to the plff was quite illegal and oper, and that the amount once paid for the cost of the cense cannot be refunded.

3. Issue No.1 - Plff's firm is a registered one de ex. 47. One partner is enttitled to sue on behalf of e firm vide O.30 R.3 of C.P.C. I hold that plff can sue one. My findings on the 1st issue is accordingly.

4. Issues 2 to 5 :- Plff's stand is that he was rely a canvosser of his three millss and gets simply mmission for such canvassing work and as such, he is not "dealer " or a " selling agent " as defined in s.2(b) and a) (iv) of the said notification. The deft's defence is t plff actually gets commision from his mills for selling ir cloth here to the shop keepers and hence, he can be te dealer or a selling agent as defined by the said fication. In order to understand the view point of each it is wotth while to bear in mind the relevent sectio said notification S. 2(b) runs as below:-

"Dealer" means a person carrying on the s, whether as principal or agent, of buying or sellir whole sale or retail or storing for sale cloth, whet n conjunction with any other business and includes but not a manufacturer" Section 4(a). (iv) reads th dealer meaning one who carries on business in clo t he shall obtain a license in form "Y". The

. Even otherwise, does the plff firm prove that it is entitled to claim the refund of the alleged license fees whether it took the licence voluntarily or not?

5. Is the alleged license fee recovered as the cost of issuing license and if not the alleged licens fee refundable as contended by the Deft?

6. What relief the plff is entitled to?

7. What order?

My findings are:

(1):- Yes.

(2):- Yes.

(3):- Yes.

(4):- Yes.

(5):- No on [illegible] second part.

(6)&(7):- As per order.

Reasons.

1. Plf is a registered firm called R.A.Sirdr and sons and deals as a representative camvasser of Mysore Mills, Banglore and Modern Mills, Bombay, since long. In 19 the Bombay Government issued an order called " Bombay Cotte Cloth Trade Regulation Order 1945" and imposed upon all sor of dealers in cloth to issue an appropriate license, accord to the kind of work they do. Forst of all plff firm applied for "F" license on payment of Rs. 50/- vide applications exs. 31 and 32 dated Sept. 1945. Later on the District Mag -strate, being not satisfied of this "F" license on a payme of Rs. 500/- on the ground that the plff firm form Mill bro or commission agents as such come under the defination of a 'dealer" as stated in s.2 (b) of the said notification read with section 4(a) (iv) of the said notification vide letter of Collector Ex. 27 dated 17-2-1948. The plff firm objected to such classification but paid Rs. 450/- in addition under

local merchants at exs. 36 and 38. The mill authority has got a right to partially admit the contract or to reject it totally. After accepting the contract ~~xxxxxxxxxxxxxx~~ ~~xxxxxx~~ the mill authority despaches the goods and sends an invoice duly signed by ~~the~~ agent to the shop keeper - concerned and sends the railway receipt through the local Bank vide two invoices exs. 37 and 39. The shop keeper e concerned then pays the amounts in the Bank, receive the Railway receipt from the Bank and takes delivery from the delivery. For securing a costumer, themill pays some - commmssion to plff vide the order for commission ex.40.

5. Thus we find that plff does neither buy nir sell cloth nor stores fit for sale. No action of the plff is binding on the said Mills. Hence plff cannot be termed as an agent as defined in the said regulation. Plff has no authority either to enter into contracts directly with the shop keepers and to receive money on - behalf of the mills. He merely brings thetwo contracting parties into contract with each other and waches them to execute the terms of the contract. He has, therefore, nothing to do with the sale of the cloth or the possession of the cloth for the sake of sale. He cannot, thereforem be called as a selling agent. as defined in section 4(a) (iv) of the said regulation. So under these said regulatic the District Magistrate had not justification to impose upon the plff the condition of issuing the "D" class licen The conduct of the District Magistrate cannot be admitted under the provisions of the said regulation. His order obtained in his letter (ex.27) dated 17-2-1946 is quite ultra vires. Plff, is in my opinion, entitled to the - refund of Rs- 450/- which have been illegally exacted x from him.

7. It is urged by the learned pleader for the deft that the lionse fee is generally paid for the cost of the license and that it is not refunadable, oncelit h

the definition of a"dealer" is so clear that it needs no elucidation. The meaning of the wording "agent" who carriesc business in cloth as defined in S.4(a) (iv) is that a person who buys cloth from mills at one rate and sells it to the customers at some higher rate and thus pockets the margin as his profit. The mill agent implies that he stores cl with him for some time, til it is sold. Let us, therefore, s having regard to the nature of thework carried on by plff, whether he can be either treated as a dealer or a selling agent as defined by the sadd Regulation Order.

4. Plff was examined at ex.35. The deft did not lead any oral evidence by way challenging the statements mad by plff. I am, therefore, constrained to believe the evidenc of plff (ex.35). Plff is nothing more than a sales represent tive of Mysore Mills, Minarva Mills of Banglore and Modern Mills Bombay. He possesses samples of cloth manufactured these three mills and an offer book.He approaches the cloth s keeper and shows them the samples of the cloth produced by these three mills and asks them to give their offer. Th keepers, after approving the samples, place an order for th cloth in the offer book in their own hand and under their signatures. That offer book is produced at ex. 46. It is sig by the shop keeper concerned. Plff prepares three copies of offer and keeps one with him, send one to the mill concerned then puts the order for the various kinds of cloth with thei rates in their contract form and sends it to the plff for getting the contract form completed at the hnds of the shop keeper conderned . The millagent signes the contract form under the designation of a sell and excepts the shop keeper concerned to sign the contract under the designation of a buyers. The terms of a contract printed overleaf of the contract form. The shop keeper afte approching the terms, signs the contract form in thepresend of the plff and hands it over to the plff for forwarding it to the mill authority andfor executing the order. Plf

in the said Regulation entitling the Govt. to with hold the amount on the ground that it was paid to meet the costs of the licence. Besides the above questionx does not arise at all in as much as plff has paid the amount under protest and without prejudice to his rights to proceed in xxx a court of law for a proper relief. vide plff's letter ex.43 dated 12-12-1946. As t amount has been paid under protest for an unwanted and unrequi -ed license, I think plff is quite justified in seeking its refund. My findings on issues 2 to 5 are accordingly.

8. Issues Nos. 6 and 7 :- Plff is entitled to the amount of Rs. 450/- with future interest at 4 percent p.a. Pl is entitled to the costs of the suit as he succeeds. My find: on Issues 6 and 7 are accordingly.

O R D E R.

Plff do recover Rs. 450/- with interest at 4 percent p.a. from the date of the suit and costs of this s from deft. The deft do bear his own costs.

sd.
29-11-49. C.J. C.

Suits:
Belgaum.
for recovery of Rs.500 paid by Plaintiff for taking a 'D' class dealer's licence under the Bombay Cotton Cloth Trade Regulation Order of 1945.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 15148
Bombay Castle, 27th December 1949.

Read Government Resolution, Legal Department No. 10469 dated the 8th November 1948.

Endorsement from the District Government Pleader, Belgaum No. 33 dated 1st December 1949 forwarding a copy of his letter of even No. and date stating that the suit noted in the margin was decided by Civil Judge (Senior Division) Belgaum on 29th November 1949 when the following order was passed:-

In the Court of the Civil Judge (Senior Division) Belgaum.
Civil Suit No. 33 of 1948.

R.A. Sirur & Son, Firm represented by its partner R.A. Sirur ..... Plaintiffs;
vs-
The Province of Bombay.... Defendant.

" Plaintiff do recover Rs. 450/- with interest at 4% from the date of the suit and costs of this suit from defendant. The defendant do bear his own costs".

Letter to the Collector of Belgaum No. 17174 dated the 7th December 1949.

Letter from the District Government Pleader, Belgaum No. J. 281 dated the 15th December 1949 recommending the institution of an appeal in the suit noted in the margin.

Letter from the Collector of Belgaum No. L.A.W. 735 dated the 17th December 1949 forwarding the above .

RESOLUTION:- Sanction is accorded to the institution of an appeal in the Court of the District Judge, Belgaum against the judgment of the Civil Judge,(Senior Division) Belgaum dated 29th November 1949 on the lines of the brief accompanying Government Resolution Legal Department No. 10469 dated the 8th November 1948.

By order of the Governor of Bombay,

Original signed
R. M. Mehta,
Assistant Secretary to Government.

P.T.O.

62

To

The Civil Supplies Department,
The Commissioner, Southern Division,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

BM.
27.12.

PGS
27/XII

Issued
27/12

Submitted after time
File in S. Bel. 1/49

28/12

29/12

S. Bel. 1/49

letter No. J 134 dt. 16-3-56

21

D E C R E E.

In the Court of the Civil Judge, S.D.

Belgaum.

Reg. O.S.No. 33 of 1948.

1.R.A.Sirur and sons,Firm represented by its partner Ramakrishna Andrao Sirur,age 63, caste Brahmin, Occ. Representative Canvasser, resisding at 115, Magazine,Camp,Belgaum. .. .. Plff.

against.

1. The province of Bombay. .. .. Deft.

Filed on 11-2-1948

Admitted on . .. 11-2-1948

Claim Rs:- 500/- for both court fee and jurisdiction.

---------0---------

Bill of Costs.(transalated into English)

	Plff. Rs. As. Ps.	Deft. Rs. As. Ps.
1.Stamps on plaint.	46- 14- 0	nil
2.Vakalatnama	0- 10- 0	0- 10- 0
3.Stamps on applications.	0- 0- 0	6- 14- 0
4. Pleaders fees	25- 0- 0	25- 0- 0
5. Process	1- 0- 0	0- 0- 0
Total	73- 8- 0	32- 8- 0
Costs not allowed.	0- 0- 0	6- 14-0
	73- 8- 0	25- 10- 0

This day the the 29th November 1949 given under my xxxxxxxxxx signature and seal of the Court.

sd. N.V. Ranasubhe.
Civil Judge, S.D
Belgaum

C.K.Chougla.
Clerk

3.

Received on:- 17-1-1950

Registered On:- 23

Decided on:- 18-1-1952.

In the Court of Extra Assitant Judge, at Belgaum

Appeal No. 24 of 1950 from the decree in Civil Suit No. 33 of 1938 of the court of Civil Judge, S.Dn., at Belgaum.

1. The Province of Bombay. ... ... Appellant (Ori. Deft)

Vs.

1. R.A.Shirur and sons, Firm represented by its partner Ramakrishna Anandra Sirur, age 63 Caste Brahmin, Coo. representative canvasser residing at 115, Camp, Belgaum.

Claim Rs. 500 for both.

Judgment.

This is an appeal by the State of Bombay against the judgment and decree of the Civil Judge, S.Dn.,Belgaum in Civil Suit No. 33 of 1948. The Government of Bombay issued an order called the " Bombay Cotton Cloth Trade Regulation Order,1945" under the Defence of India Rules, on the 19th February 1945 directing the dealers in cloth should take out licences in the prescribed form according to the nature of the business transacted by them. In persuance of that order, the plff which is a registered firm doing business in the name and style of R.S.Sirur and Son obtained F licence on 28-9-1945 on a payment of Rs. 50/-. The District Magistrate, Belgaum, instisted upon the plff taking out a "D" Class licence on the ground that the plff was carrying on business in cloth as an agent. The plff paid Rs. 450/- under protest on 13-12-1946 and took out 'D' licence. It has brought the suit giving rise to this appeal to recover from the deft Rs. 500/- alleging that the plff is a firm doing business of a representative canvasser for the cloth produced by

the Mysore Mills, Minerva Mills. Banglore Mills Modern Mills, Bombay, that the plff being a mere sales represent -ative of the mills has no business authority to conclude any transactions with the cloth dealers on behalf of the mills, that the plff is not a dealer as defined in the afore-mentioned Order issued by the Government of Bombay that the plff was not required under that order to take out any license, that it was wrong on the part of the District Magistrate to direct the plff to take out any license, that on 28-9-1945 the plff paid Rs. 50/- for 'F' licence, that the balance of Rs.450/- was paid on 13-12-1946 for obtaining 'D' licence and that the deft was bound to refund the licence fee thus recovered.

2. The deft contended inter alia that the plff was a selling agent of the three textile mills referred to abov that the plff was obliged to take out a 'D' licence under the order and that the plff was not entitled to the refund of the licence fee.

3. The learned trail Judge held that the plff was not a 'D' class dealer under the Bombay Cotton Cloth Trade Regulation Order, 1945, that it was wrong on the part of the District Magistrate to have ordered the plff to take out a 'D' class licence and that the plff was entitled to recover the licence fee paid by him.

4. Seven issues were framed in the trail comurt. Out of them only the following issue is pressed by the learned Government pleader for the Bombay State.

" Does the plff firm prove that it is only a representative canvasser and does not fall within the purview of 'D' class dealer as defined in the Bombay Cotton Cloth Trade Regulation Order, 1945?"

5. My finding on that issue is in the affirmative.

Reasons

6. The only question that falls to be decided in this appeal is whether the plff firm is a 'D' class dealer under

25.

the Bombay Cotton Cloth Trade Regulation Order, 1945, hereafter called the order. The word 'dealer' is thus defined in that order:

" Dealer" means a person carrying on the business, whether as principal or agent, or buying or selling whether wholesale or retail or storing for sale cloth, whether or not in conjunction with any other business, and includes a hawker but not a manufacturer."

"D" class dealer means one who carries on business in cloth as an agent. Such a dealer is required to obtain under the order a licence in Form V given in that order.

7. The plff(ex.35) swears that he is simply a sales representative of Mysore Mills, Minerva Mills Banglore and Modern Mills Bombau and that he is not the agent of those Mills. He takes with him samples of cloth manufactured by the three Mills and an offer book of the nature produced at Ex.46 and approaches the shop keepers and requests them to place orders for the cloth produced by aforementioned Mills. The shop keepers place their orders for the cloth with him if they approve of the samples. The orders are written in the offer-book by the cloth shop-keepers and signed by them. The plff prepaxres three copies of the offer keeps one with him, sends on to the Mill concerned and gives one to the shopkeeper. The mills concerned send the contract forms such as to be found at Exs.36 and 38 and asks the plff to get those forms sighed by the shop-keeper. The contract form is sighed by the Mill agent as a seller. This can be seen from Exs. 36 and 38. After receipt of the contract form the plff takes it to the shop-keepxr concerned and if the terms of the mills contained in those forms are approved by the shop-keepr; he askes their signatures on the contract forms. The contract forms are then sent to the Mill. The Mil authorities have a right to accept the order or to reject it. If they accept the orders then they dispach the goods fo which orders are given by the shop keepers and send the

invoice of the bills signed by the agent to the shop-keeper concerned and send the railway receipt through the local - Bank. The shop-keepr concerned pays into the Bank the amount for which he has placed orders with the mills, takes the Railway receipts from the Bank and olivery from the railway authorities. The mills pay commission to the plff at the rate of 1¼ per cent on the value of the goods purchased by the customers from the - mills. The plff does not buy or sell cloth manufactured by the mills. He does not store cloth for sale. He has no independent charge to enter into contracts directly with the shop-keepers and receive money from them on behalf of the mills. He cannot be termed as an agent as defined in the Indian Contract Act. The test to determine whether a person is an agent is whether the person has the power to representing the principal, that is, making the principal answerable to third parties. In this case, it is clear that the plff does not work of bringing the shop-keepers and the mills together and sees that the orders placed by the shop-keepers are executed by the mills. He cannot in any way be called a selling agent as defined in the order. The District Magistrate was not justified in compelling the plff to take out a 'D' class licence. The plff complained that he was not required to take any licence under the order. He took out 'F' licence under the order by paying Rs. 50/- on 28-9-1945. The District Magistrate ordered him in by his - letter Ex.27 dated 26-8-46 that he should take out a 'D' licence. Accordingly the plff paid Rs.450/- under protest on 13-12-46 and took out a 'D' licence. The learned trail Judge has held that the plff is entitled to a refund of the amount paid by him on 13-12-46 under protest. No appeal has been preferred by the plff against the disallowance of the claim of Rs. 50/-paid by him for taking out 'F' licence. The learned trail judge was in my opinion right in holding that the plff was not a dealer under the order and that the plff was entitled to recover from the deft Rs.450/- paid by him on 13-12-1946.

8. The result is that the appeal fails. I pass the following order:-

ORDER

The appeal is dismissed with costs.

18-1-1952. sd.

Extra Asstt. Judge,
Belgau

Suits:
Belgaum.
For recovery of Rs.500 paid by plaintiff for taking a 'D' class dealer's licence under the Bombay Cotton Cloth Trade Regulation Order of 1945.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 8019
Bombay Castle, 13th May 1952.

Read Government Resolution, Legal Department No.15148 dated the 27th December 1949.

Letter from the District Government Pleader, Belgaum

In the Court of the Civil Judge (Senior Division), Belgaum.	No.J.43,
Civil Suit No. 33 of 1948.	dated the 24th
R.A.Sirur & Son, Firm represented by its partner.... Plaintiffs. R.A.Sirur.	January 1952
versus.	stating that
The Province of Bombay..... Defendant.	the appeal No
	24 of 1950 in

the suit noted in the margin was decided by the Extra Assistant Judge, Belgaum on the 18th January 1952, when the following order was passed:-

" The Appeal is dismissed with costs.".

Endorsement from the District Government Pleader, Belgaum No.J 53 dated the 28th January 1952, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the appeal is recorded.

By order of the Governor of Bombay,

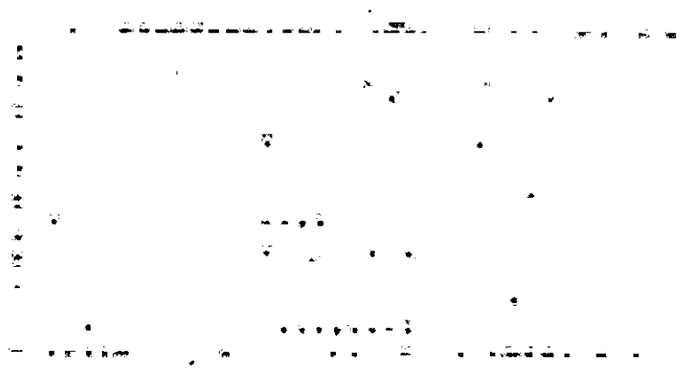
Original Dhurandhar
S.W.Dhurandhar
Assistant Secretary to Government.

To
The Civil Supplies Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum

KMB/10

Submitted for Sign
NB 10/5/52
A.S.(Adm)

28



Zile in S. Bel 1/49

AB
14/5/52

S Bel 1/49
15/5/52